

BAINBRIDGE ISLAND METROPOLITAN PARK & RECREATION DISTRICT
SPECIAL BOARD MEETING May 19, 2023
BAINBRIDGE ISLAND RECREATION CENTER

CALL TO ORDER: A quorum being present, the meeting was called to order at 11:30 am by Chair Kinney.

BOARD MEMBERS PRESENT: Ken DeWitt, Tom Goodlin, Dawn Janow, Jay Kinney, Tom Swolgaard.

CONFLICT OF INTEREST DISCLOSURE: Commissioner Janow said she has a conflict of interest with General Business item 30.1. Commissioner DeWitt said he has a conflict of interest with General Business item 30.2. Commissioner Swolgaard said he has a conflict of interest with General Business item 30.3. Commissioner Kinney said he has a conflict of interest with General Business item 30.4.

MISSION STATEMENT: Chair Kinney read the Park District's mission statement: The mission of the Bainbridge Island Metropolitan Park & Recreation District is to build a healthy community through effective, sustainable stewardship of the District's parks and open space, and through the development and delivery of innovative cultural and recreation opportunities.

PUBLIC COMMENTS

Mary Dombrowski said she hopes that the frivolous lawsuits will be charged back to the person who has filed them and said that the Fort Ward Neighborhood Association has some funds they would like to contribute to the Fort Ward Parade Grounds playground project.

Cindy McCall said she was on the 2016 Sakai Park community center planning committee and that through the Bainbridge Island Recreation Center some of the needs identified then have been met. She supports a new survey, and she supports the board.

Adam Hunt said he is the person that brought the recall charges and he read aloud an email he sent to the board earlier today:

"I note with a bit of irony the board's willingness to create a special date and time to discuss the recall charges and defense but not the Sakai Park planning process as requested by the community. There is no need for a recall if the Board will start using the tools available to it for public input.

Speaking of which, if your fellow commissioners and Executive Director Lande are willing to restart the two "temporarily suspended" citizens advisory committees from years ago in 2020 and have a meaningful planning process to avoid wasting money on a meaningless survey, then I am open to dialogue about dismissal of the recall charges in the interests of the greater goods of our kids, many of whom you heard from last night, and the whole community."

Adam Hunt suggested that there should be more public participation with the Sakai Park planning process and expressed a desire to work with the Park District, stating "Let's work together and I'll get rid of the stupid recall, okay?"

Commissioner Kinney said speaking for himself he thinks it is very dangerous business to have somebody bring a recall charge to force the board to take specific action. That is over the top. He is not ever going down the road of, do what I want when I want it or I am filing a recall, which is what Adam Hunt has done.

Cat Weber said she is the president of boys' gymnastics club and would like to see some solutions proposed for indoor sports facilities.

Ann Marie Sargent said she is concerned that taxpayer funds will be used to defend the board in the recall.

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Sabrina Fiander said she is concerned that taxpayer funds will be used to defend the board in the recall.

GENERAL BUSINESS

REQUEST BY COMMISSIONER DAWN JANOW FOR THE PARK DISTRICT TO PAY THE NECESSARY EXPENSES OF DEFENDING HER (INCLUDING COSTS ASSOCIATED WITH AN APPEAL) IN THE JUDICIAL HEARING TO DETERMINE THE SUFFICIENCY OF THE RECALL CHARGES BROUGHT IN THE RECALL OF DAWN JANOW, KITSAP COUNTY CAUSE NO. 23-2-00859-18, PURSUANT TO RCW 4.96.041(3): MSC: DeWitt/Swolgaard: Move to authorize the Park District to pay for Commissioner Janow's defense. Commissioner Janow abstained. Commissioner Kinney said four of the five commissioners are facing recall on five charges. If all four board members were successfully recalled at the same time, then there would only be one commissioner left. There must be a quorum of three commissioners to pay a bill or to pass a budget. The Park District would come to a halt. The lights would be off, and the doors would be locked. The Kitsap County legislature would then appoint a second commissioner. Then Commissioner Goodlin and the appointed commissioner would have to have a public meeting to appoint a third commissioner. That whole process would take some time. He thinks there will be an exodus of staff, as they will not be paid. There is a shortage of workers in the field of parks and recreation and the Park District already has a hard time hiring. It would take months to get the agency back up to speed. Therefore, he thinks it is imperative for the Park District to defend the commissioners in this recall so that does not come to pass. Executive Director Terry Lande added that the commissioners are not guilty of any of the recall charges. Commissioner Kinney said the commissioners will be in court on Tuesday, May 30 at which point the judge is going to listen to arguments and decide on whether the recall charges are legally and factually sufficient. In Washington State there must be cause to recall a commissioner such as malfeasance, misfeasance, or violation of oath of office. The petitioner must identify a legal standard or mandate that was violated with facts to back that up. Commissioners cannot be recalled over the use of discretion, and they have discretion in administering the Park District as has been laid out in the law. The commissioners do not believe they have done anything wrong, and they plan to clear their names. Commissioner Janow said she is recusing herself from this agenda item. Commissioner Goodlin said that commissioners serve on a volunteer basis with no compensation. He thinks that because of the office the commissioners hold that if they are charged with something like this that it is appropriate for the Park District to pay the bills.

Park District Attorney Hayes Gori said as the Park District counsel he must weigh in on this topic per the statute. He read RCW 4.96.041(3) into the record:

RCW 4.96.041. Action or proceeding against officer, employee, or volunteer of local governmental entity —
Payment of damages and expenses of defense.

(3) The necessary expenses of defending an elective officer of the local governmental entity in a judicial hearing to determine the sufficiency of a recall charge as provided in *RCW 29.82.023 shall be paid by the local governmental entity if the officer requests such defense and approval is granted by both the legislative authority of the local governmental entity and the attorney representing the local governmental entity. The expenses paid by the local governmental entity may include costs associated with an appeal of the decision rendered by the superior court concerning the sufficiency of the recall charge.

Hayes Gori said this action is entirely authorized by statute and contemplated. Staff has contacted Enduris, the risk pool insurer for the Park District, which does not cover the defense costs in this case. His inquiry has been to determine if the charges encompass actions, decisions, and conduct that is within the scope of the commissioners' official duties. He has reviewed every petition and every charge and sub charge and is satisfied that all the charges do encompass official commissioner duties and for that reason he approves Commissioner Janow's request.

REQUEST BY COMMISSIONER KEN DEWITT FOR THE PARK DISTRICT TO PAY THE NECESSARY EXPENSES OF DEFENDING HIM (INCLUDING COSTS ASSOCIATED WITH AN APPEAL) IN THE JUDICIAL HEARING TO DETERMINE THE SUFFICIENCY OF THE RECALL CHARGES BROUGHT IN THE RECALL OF KEN DEWITT, KITSAP COUNTY CAUSE NO. 23-2-00860-18, PURSUANT TO RCW 4.96.041(3): Commissioner DeWitt recused himself from this agenda item. **MSC: Janow/Swolgaard: Motion to approve and authorize legal counsel through the Park District for Commissioner DeWitt. Commissioner DeWitt abstained.** Commissioner Janow said this started with a series of public records requests which are a legal obligation that is expensive and taxing to fulfill.

Adam Hunt said it is not a foregone conclusion that it will be a three-month process to replace the commissioners or that all the staff will leave.

Cat Weber said that there should be a cap put in place on the legal fees.

Park District Attorney Hayes Gori said this is an expedited legal proceeding and there will be an expedited right to appeal to the Washington State Supreme Court. In terms of the cost, it is bracketed in terms of time as it is a very fast procedure. In terms of notice of this special board meeting, the Park District met all the statutory requirements and went above and beyond by sending the agenda to a listserv consisting of thousands of island residents.

Commissioner Kinney said that if four commissioners were recalled all at once the big hurdle would be getting the county legislature to meet, vet a candidate, and appoint someone, which is not going to happen quickly. Then when the two commissioners go to appoint a third commissioner it will be hotly debated because the third person can align with either of the other two commissioners to have the power to appoint the fourth commissioner. The community would want to be heard throughout the process. There would be quite a delay in his estimation of what would happen if all four commissioners were removed from the office at once.

Hayes Gori said for reasons previously stated he approves this request.

REQUEST BY COMMISSIONER TOM SWOLGAARD FOR THE PARK DISTRICT TO PAY THE NECESSARY EXPENSES OF DEFENDING HIM (INCLUDING COSTS ASSOCIATED WITH AN APPEAL) IN THE JUDICIAL HEARING TO DETERMINE THE SUFFICIENCY OF THE RECALL CHARGES BROUGHT IN THE RECALL OF TOM SWOLGAARD, KITSAP COUNTY CAUSE NO. 23-2-00861-18, PURSUANT TO RCW 4.96.041(3): MSC: DeWitt/Janow: Move that the board approve the request by Commissioner Swolgaard for the Park District to pay necessary expenses for defending him in the recall. Commissioner Swolgaard abstained.

Adam Hunt requested an estimate from the board for how much money is being authorized today.

Park District Attorney Hayes Gori said the purpose of the statute is so that people will be willing to serve in elected capacities and not be subject to recall petitions that they must defend out of their own pocket. One does not want disincentives for people to serve in public office. The statute does not include any cap on what the agency can pay. There are five charges, and each petition is 60 pages long, and there are only 11 days between now and the court hearing. There will be a significant amount of work done on the briefing and then the attorneys will appear in court. He thinks it will cost at least \$10,000. The statute does not require a cap and he does not believe the public policy behind the statute would want that to be the case. Commissioner Janow said that counsel has not been retained yet, that is the next step. Commissioner Kinney said if you count the time that he, as an attorney, has already spent working on this it would already cost over \$25,000. He would not be surprised if it costs over \$40,000 which would be multiplied if it was taken to the Washington State Supreme Court.

Cat Weber asked if the recall could be retracted so there are not such dire consequences and said she thinks it is more of a matter of a way to work together for solutions.

Hayes Gori said for reasons previously stated he approves this request.

REQUEST BY COMMISSIONER JAY KINNEY FOR THE PARK DISTRICT TO PAY THE NECESSARY EXPENSES OF DEFENDING HIM (INCLUDING COSTS ASSOCIATED WITH AN APPEAL) IN THE JUDICIAL HEARING TO DETERMINE THE SUFFICIENCY OF THE RECALL CHARGES BROUGHT IN THE RECALL OF JAY KINNEY, KITSAP COUNTY CAUSE NO. 23-2-00858-18, PURSUANT TO RCW 4.96.041(3): Commissioner Kinney recused himself from this agenda item and Commissioner Swolgaard took over on the duties of chair for this agenda item. **MSC: DeWitt/Janow: Move that the board approve the request by Commissioner Kinney for the Park District to pay necessary expenses in defending him against the recall. Commissioner Kinney abstained.**

Adam Hunt said that taxes funded the public process in 2016 for Sakai Park planning, the concept plan developed for Sakai Park, and that taxes are funding the bond payments for the Sakai Park property.

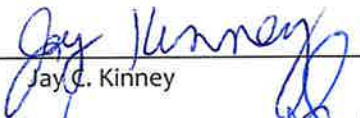
Commissioner Janow said for the reasons previously stated she is in favor of this motion.

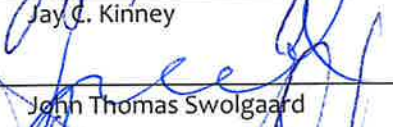
Hayes Gori said for reasons previously stated he approves this request.

MEETING ADJOURNED TO EXECUTIVE SESSION at 12:08 pm for discussion of litigation with announced time to reconvene at 12:38 pm.

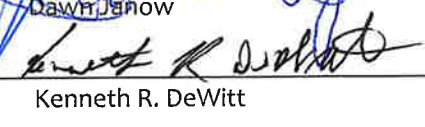
MEETING RECONVENED at 12:38 pm and **ADJOURNED** at 12:38 pm.

Helen M. Stone
Terry M. Lande
BAINBRIDGE ISLAND METROPOLITAN
PARK & RECREATION DISTRICT

BY: 
Jay C. Kinney

BY: 
John Thomas Swolgaard

BY: 
Dawn Janow

BY: 
Kenneth R. DeWitt

ATTEST:


Tom Goodlin